Babulal & Anr. vs. State of Rajasthan & Ors.

SB Civil Writ. Petition No.4755/2006

Date of Order: 4th September, 2006.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.Sudhir Sharma for the petitioner/s.
Mr.S.K.Vyas for the respondent- State.
Mr.Sangeet Lodha for the applicant.
Mr.Dinesh Panwar and Mr.Ramniwas present in person.

BY THE COURT:

Reportable-

The present writ petition has been filed by the petitioner for the following prayer:-

> " It is, therefore, most humbly and respectfully prayed that by an appropriate writ, order or direction the respondents may kindly be restrained from holding the meeting on 31.08.2006.

During the course of hearing it was ordered that the meeting of the No Confidence Motion may take place but the result will not be declared. The ballot box containing the votes and the

proceedings of the No Confidence Motion were produced before this Court. After the ballot box was opened 15 votes were found there in . There were 21 elected members and one member was MLA who was statutorily included. Therefore the elected strength of the Board was 21. Two third of which would be 14. When the ballots were counted there were 15 ballots in favour of the Motion and there were no ballot against the No Confidence Motion. After these proceedings the learned counsel were heard on the merits of the case.

The case of the learned counsel for the petitioner is that since no notice was issued to the Member, Parliament, the proceedings held in support of the No Confidence Motion stand vitiated. In that view of the matter, the proceedings are vitiated. He has placed reliance on a case decided by this Court reported in Yogesh Chandra Saini & Ors. vs. State of Rajasthan (DNJ (Raj.) 2002 (1) 208. This Court while interpreting the law has held as under:

> " The question of law, which was common to all the writ petitions and which was canvassed by the learned counsel for the parties before and formulated by the learned Single Judge was -"whether the ***Member of the Legislative Assembly*** (MLA) and Member of Parliament (MP) representing a Council can be treated as full fledged member of the Municipal Council, so as to participate and vote in the

> proceedings of No Confidence Motion for removing the Chairman or Vice Chairman of the Municipal Council and hence, were required to be given a notice of the meeting for carrying out the Motion of No Confidence."

In the aforesaid case as decided by this Court, notice to Member Parliament was necessary. That having not been given No Confidence Motion was , therefore, held bad in the eye of law and was quashed.

I have examined the case and the relevant law in this regard.

The law in this connection has been made by the Legislature pursuant to the provisions of Art.243 of the Constitution of India which is reproduced herein below:

> "243-R Composition of Municipalities,- (1) Save as provided in Cl.(2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.
>
> (2) The Legislature of a State may, by law, provide-

(a) for the representation in a Municipality of -

(i) persons having special knowledge of experience in local administration;

(ii) the members of the House of People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;

(iii) the members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;

(i) the Chairpersons of the Committees constitute, u/cl.(5) of Art.243-S:

Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;

(b) the manner of election of the Chairperson of a Municipality."

Section 3 (2) of the Rajasthan Municipalities Act which defines the No Confidence Motion is also relevant therefore, the same is also quoted herein below:

> "3(2) The Collector shall send by registered post not less than seven clear days before the date of the meeting a notice of such meeting and of the date and time fixed therefore to every member of the Board."

Section 9 of the Rajasthan Municipalities Act 1959 (hereinafter referred to as 'the Act'), as has been considered by this Court in deciding the case of Yogesh (supra) was in the following terms:

> **"9. Composition of Boards,-** (1) Subject to the provisions contained in the succeeding sub-sections, but save as provided in the following provisions of this sub-section, all seats in a municipality shall be filled by persons chosen by direct election from the territorial constituencies known as wards, the number of such seats, not being less than thirteen, being fixed by the State Government from time to time by notification in the Official Gazette:-
>
> [(a) the following shall be represented on the board, council or corporation, as the case may be , viz;-

(i) a member of the ***Rajasthan Legislative Assembly*** representing a constituency which comprises wholly or partly the area of a municipality; and

(ii) .....

.....

Provided that -

(i) .....

(ii) .....

(ii) .....

.....

(b) a member of the House of the People representing a constituency which comprises wholly or partly the area of a municipality with a municipal council or as the case may be, a municipal Corporation shall be represented on the Council or Corporation of such municipality:

.....

.....”

Section 9, after incorporation of the amendment as made by Act 22 of 2000 brought into force from 22nd July, 2000 reads as follows :

“9.Co-option,- (1) The co-option of a person under S.9 (5) of the Rajasthan Municipalities Act cannot be challenged by means of an

election under S.34 of the Act. Section 34 does not contemplate the challenging of the co-option of any person by an election petition. It is provided that a co-opted member shall be treated for all purposes of the Act as an elected member. But in the Act two different expressions namely 'election' and Co-option, have been used for the two processes of election and co-option and there is no provision that 'co-option' is to be treated for all purposes as 'election'. Further the provision contained in S.36 (2) that a petition can be presented by any elector of the ward goes to show that the legislature did not contemplate that co- option should be challenged by means of an election petition under Section 34 and consequently did not use more comprehensive language. Nirmala Devi v. Election Tribunal . 1965 RLW 155=ILR (1965) 15 Raj. 445.

(2)It is necessary for the members to take oath before proceeding to co-option other members under Section 9 of the Rajasthan Municipalities Act. Co-option of members is a step in the formation of the Municipal Board itself and although the elected members perform a duty when they co-option other members under S.9, they do not act as a Board in doing so. Section 61 (1) envisages a duty performed by a member on behalf of the Board. Co-option takes place at a stage before the members being to function as Board. Manak Chand & Anr. v. The State of Rajasthan ILR (1961) 11 Raj. 63.

(3)Right of voting in co-option proceedings is confined to elected members only and never to nominated members. Pabusingh v. Returning Officer. 1984 Raj. LR 90= 1984 RLW 31=1983 WLN 583=AIR 1984 Raj. 166.

(4)Co-option – Meaning & validity of , -Co-option is nothing but election. None of the members of electoral college were legally elected. Co-option by such members is held to be void ab initio. Zilesingh vs. Dy. Comm.Sonepat. AIR 1976 P & H 91.

(5) Co-option of member from backward class – Article 15- validity of , -Rules for co-option of member to Municipal Board/ Panchayat Samiti prescribed qualifications that the person must belong to backward class only. Such a classification within class is not violative of Article 15 of the constitution hence such classification is permissible. Ramkant Choudhri v. State of Bihar, AIR 1981 Patna 81."

A comparison of both the Sections would show that the judgment has proceeded on the interpretation of the unamended provisions of Section 9 of the Act. May be that, that day the court was required to judge in the light of the unamended provisions . The amendments have come in the year 2000 and brought into force from 22nd July , 2000 as has been quoted herein above. No Confidence Motion in the case of Yogesh (supra) was considered for the period i.e. latter part of the 90s. The amended provisions had come in 2000 . The case of Yogesh (supra) was heard in 2000 for earlier periods. Therefore, amended provisions were not referred and considered. In this light , laws laid down by the case of Yogesh

(supra) will not govern this case..

If the amended provisions are looked into then in terms of Municipal Act notice was necessary to a ***Member of the Legislative Assembly.*** Since the case of Yogesh (supra) is on the basis of the interpretation which was relevant for the unamended provisions it would not be necessary to go into the decision of that case. The provisions, were relevant for deciding the laws as then existed.

As regards the present law is concerned it will be relevant to note that the composition of the Board would be the composition of the elected members and the ***Member of the Legislative Assembly.*** The notice was not given to the Member , Parliament and rightly because in term of amended provisions of Section 9 of the Act in absence of notice the proceedings of No Confidence Motion do stand vitiated. The proceedings, as has been observed earlier, have been supported by the required majority of the votes, therefore, the No Confidence Motion had the required support.

It is, therefore, ordered that the Collector may make a

declaration of the result of the proceeding of the No Confidence Motion in accordance with law. With the aforesaid observations the writ petition is accordingly disposed off.

(**BHAGWATI PRASAD), J.**

L.George